

**MOTIONS FOR NEW TRIAL — Rule 24.1— When court corrects itself,
defendant must consent to new trial — Revised 10/2009**

Rule 24.1(c)(4), Ariz. R. Crim. P., provides that the trial court may grant a new trial or, in a capital case, an aggravation or penalty hearing, on the defendant's motion, or on its own motion if the defendant consents, if the court finds it has erred in the decision of a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of a party. Note that if the trial court decides to grant a new trial, on its own motion, the defendant must consent to the new trial. See Rule 24.1(a). The trial court cannot grant a new trial on its own initiative without obtaining the defendant's consent or over the defendant's objection. *State v. Hopper*, 112 Ariz. 131, 131, 539 P.2d 888, 888 (1975).